



SOME
REMARKS
ON THE
College of Physicians Charter.



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REMARKS
ON THE
CHARTER
OF THE
College of Physicians
In L O N D O N, &c.

PART II.



L O N D O N:

Printed for JONAH BOWYER, at the *Rose*
in *Ludgate-street*. MDCCXIV.

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REMARKS
ON THE
CHARACTER
OF THE
College of Physicians
IN LONDON, &c.

PART II.

LONDON.

Printed for JONAH BOWYER, at the Rose
in Langbaine-street, MDCCLXIV.

T H E
P R E F A C E.

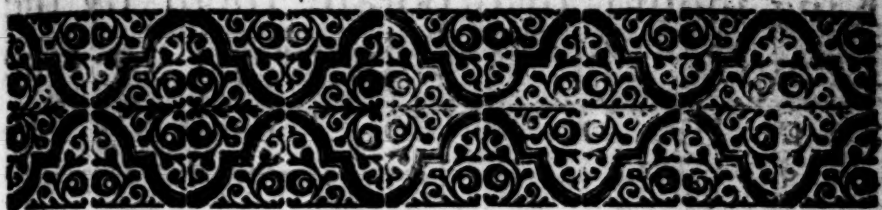
MY Design in Publishing the First Remarks being only to bring this Controversy to an *Eclaircissement*, I hope it is pardonable to answer all Objections to them that I have met with. It lies upon me to satisfy both University-Men, and the Gentlemen of the Long Robe: I must therefore have Both in my View; and if any Terms are used to the one, which may seem odd to the others, I hope it will be excused. The Foundations of Colleges are so much of the same Nature, and so different from other Corporations, wherein the Law is concerned, that it is no wonder if our Affairs have been less considered; because all our Causes come before

The P R E F A C E.

fore Visitors, not into the Courts of Law, tho' it is otherwise in this College. And surely it cannot be any Offence, to lay the Case before those who are our Visitors in it, as fully as we possibly can. I have annexed to this Part the Two Acts of Parliament, because they are the only Statutes relating to this Controversy before the Charter 14. 15. H. 8. And I hope will serve to clear some things in the Remarks, and lay every thing in one View to whoever pleases to consider the Matter.

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S O M E

R E M A R K S, &c.

THE First Objection to the
 T *Remarks* is, That Faculty
 means all Practisers.

But this is so absurd, as
 that it answers it self. Let us suppose,
 that the Faculty out of *London* was now
 to be Incorporated in the Words of this
 Charter; Wou'd any one of common
 Sense understand them so, as that all
 the Mountebanks in *England* were in-
 cluded in the Faculty? Especially
 when the King tells us, That he de-
 signed to suppress ill Men; and the
 Doctors, who petition for the Charter,
 do it upon that Account. Is it likely,
 that,

that, in Answer to such a Petition, the King should Incorporate them by the Lump? This is only urged to take away the Distinction, which the Remarks justly make betwixt the *Homines Facultatis*, and the *Exercentes Facultatem*, &c. which therefore I will set in a clear Light.

The *Admissi* in the Charter are what the University calls *Practicantes*, and the same who before by 3. *Hen. 8.* were to be admitted by the Bishop of *London*, or Dean of *St. Paul's*, if approved by Four Doctors; that Power being by this Charter transferred to the College, when it became a Corporation. And in the University their Admission is *ad Practicandam in Medicina*, as in the Charter *ad Exercentiam Facultatem*; and with the Bishop and Dean it was, to *Practise*. These *Practicantes* in the University are to be examined by what Number of Doctors the University appoints; and if approved, are
admitted

admitted to Practise : Just the same Power was given to the Bishop or Dean, with four Doctors to approve : The same is now lodged in the College. Before the Faculty was incorporated, they had no Seal, and consequently could give no Letters Testimonial, and therefore the King appoints them only to examine ; and the Bishop and Dean having Seal, &c. the Letters were to pass there. But when the King thought fit to Incorporate the Faculty, and to give them Seal, &c. then He places the whole Power in them. For the Doctors here, as in the University, were before the only Persons to examine ; and when they became a Corporation, as the University was, could as well admit *ad practicandum*, and give Letters accordingly. Which indeed, so long ago as *H. 8.* was as common a Way of qualifying as any. We see every where the Doctors were unexceptionable Men ; and the Bishop and Dean were so far from having any

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Power

Power over them, that in 3. *H. 8.* they could not admit without four of them; in 13, & 14. *H. 8.* comes the Charter, and takes this Power from the Bishop and Dean, and gives it to some People, whom it then Incorporates, and their Successors, and calls them *The Faculty of Physick*; and we are now puzzled to know who is meant. Say the College, To be sure, not the Doctors.

Let us then impartially consider what *Homines Facultatis* here must mean. The King mentions the Example he takes from *Italy*, and other Nations. Some of the College perhaps can inform us what is meant by the Faculty at *Padua*, *Paris*, &c. I can only say, That our own Universities know of no other Faculty but Doctors; and I dare venture to say without Book, no other University in *Europe*. In our Stile, *Homines Facultatis*, *Doctores*, *Professores*, *Regentes*, mean the same Thing, i. e. the Supreme Degree in
what

what they are apply'd to : The Physicians of our own Universities are the Practicants , the Batchelors, and Doctors. The Batchelors cannot practise by that Degree, unless they are admitted *ad Practicandum* ; neither they, nor the Practicants can be of the *Caput* for the Faculty of Physick, or Sign any Grace which the Statutes require to be signed by the Faculty ; nor do any thing else , that the Faculty is to do. So that if the common Talk of those who don't understand the Matter , should call those of the Line of *The Faculty*, that is nothing ; since no Charter or Statute deems them so; which is our Law ; and they who made the College Charter understood it very well , and I hope their Successors will find it out in due time.

But say some, if Faculty does mean Doctors, why Doctors of *Oxford* and *Cambridge* ? We are sure those Words are not there.

And no wonder. They are incorporated in their general and constant Stile. And pray let the College tell us, what other Doctors they could be. If there had been no Statute about this Matter before, and the King had incorporated the Doctors of Physick, and their Successors, would the Common Law have understood the Charter to mean Doctors of *France*? Surely only the Doctors of *England*; and they could be no others but of *Oxford* and *Cambridge*. What occasion then was there to mention those two Words by way of Flourish, when they are as fully expressed, and in as common and proper a Style by *The Faculty*. Besides, by the Statute 3. *H. 8.* no Body could practise but them, and the Practicants approved by them; and surely the College will not imagine the Persons incorporated were any Body who could not legally Practise at the time of the Grant of the Charter. Will they have those Practicants to be of the Faculty? It won't

won't hurt us if they will, for they could have no Successors. But I can't but observe upon such a Supposition, how much Eleven Years had improved their Credit, according to the meaning the College would give their Charter. In the 3. H. 8. they were to be examined by the Doctors; but in 13, 14. H. 8. they were to examine the Doctors, as the College would understand the Charter. For if they will have them to be *Homines Facultatis*, there is no difference in Stile or Power. But why should we suppose the Bishop and Deans Practicants were *Homines Facultatis*, when the University ones are not? From whence are we to take their Stile? The College now don't allow their Practicants to be *Homines Facultatis*, to whom the Bishop's Power is descended, because they have no *Negotia* in the College, but only Permission to Practise, whereas all the *Homines Facultatis* have *Negotia*.

I would here ask the College, if the *Homines Facultatis*, and the *Exercentes*, *frequentantes Facultatem*, &c. were the same, why the President did not govern *omnes homines exercentes Facultatem*, &c. & *negotia eorundem* ; as it is said of the *Homines Facultatis* in the beginning of the Charter, where the Corporation it self is spoken of? And why in the latter end, when the *Exercentes*, &c. were all generally put under the Government of the Corporation, there is no mention of their *Negotia* likewise? With Submission, because they were not of the Faculty, and had no *Negotia* ; but only had liberty to *Præstare*, and in that were to be under the *Supervisum* of the College. I don't say, that the Doctors can't be said *præstare*, or *exercere Facultatem*, those being general Expressions for practising : But that the Doctors have never that Stile, they being *Homines Facultates* ; That the Practicants have no other Stile ; And that the Charter preserves

serves to each every where their proper Stile, and always calls the Doctors *Homines Facultatis*, the others nothing more than *exercentes Facultatem*, &c.

It is further urged, that Doctors of *Oxford* and *Cambridge* being expressly mentioned in the Saving Clause out of *London*, they would likewise in the Incorporating Clause, if they had been the Persons meant.

I say in answer, That they are there mentioned under their general Title, as expressly as if *Oxford* and *Cambridge* had been there. Because there are several ways of expressing Doctors of *Oxford* and *Cambridge*, must they of Necessity always be expressed the same way? I must aver, that the Incorporating Clause, as it now stands, is just the same as if it had said *Doctores Chamber*, &c. *Omnesq; Doctores in & de Civitat. predict.* And since there was no others who could legally Practise, the Purport of the Incorporating Clause is the very same, as if it had said

said Doctors of *Oxford* and *Cambridge*. I would here only ask the College to tell us fairly their Opinion, Suppose the Act had gone on in the same Stile the Charter uses, and in the Saving Clause had excepted out of the District the *Men of the Faculty*, whether that Expression had not excepted just the same Persons, that it does as it now stands, Doctors of *Oxford* and *Cambridge*, and no others: Just so the Charter as expressly Names them in the Incorporating Clause.

THE next Objection is this. We allow the Doctors of the Universities to be the only *Homines Facultatis*, and their Successors; but yet they are not *ipso facto* Incorporated, but must be admitted into the *Communitas* as well as the Practicants *ad exercendam Facultatem*, and for that must pay, as well as they.

Here I must premise, that the Charter never mentions any Admission but
for

for the Practicants, those whom before the Charter the Bishop and Dean were to admit. There is no Thought of any Admission for the Faculty, they came in of Course, and were of the Corporation as they settled in the District. However, the College commonly calls it Admission when the Doctors come in; The Remarks do the same, when 'tis said we demand Admission, and yet don't want it. But what is this Admission? It is no more than recognizing our Right by entring Us in the Register; by admitting us to their *Negotia*, or the like; which we claim *ex debito*, not *ex Gratia*, and yet don't want any such Ceremony, because Proof of living in the District is as effectual. Just as if the Register in the University should not enter a Degree, yet due Proof of it would entitle the Person to the Privileges of it. The Case is otherwise with the Practicants. They take in a manner a Degree in the College; they claim *ex Gratia*; have no demand

to be admitted to Practise, unless the Faculty thinks fit ; In this Case reasonable Fees are always allowed by the Common Law, tho' we think it otherwise where a Person claims *ex debito* ; where He demands his Property. However, I must confess, I think this to be the only Point in Law, betwixt the College and Us. Whether they can recover any Sum of Money of Us as a Corporation Fee for coming into the District. And it will be time enough to consider that Matter when they lay their Action that way. This is a new Cause entirely. They have always sued, and the Cause now depending is upon another Issue, *i. e.* the Penalty of the Charter for practising; that I think we need not fear, and I hope have said enough to make others think so too. If they will bring their Action for a Corporation Fee, they must first Recognize us, and if we refuse to pay what they demand as Fee, quite a different Action begins from what is depending,

peding, or has been ever tryed, in which at present we are not concerned.

I must Observe further, that after all, the College does not really act upon this Charter of *H. 8.* but that of *Car. 2.* which is a quite different Corporation, under a new Stile, with different Powers, &c. yet when they have any dispute with the Faculty they always urge this, because the other don't affect us. But that can't be. They can't be two Corporations; nor do we want the College Books to prove this, as some have said. Nothing more easily appears by all their publick Proceedings. They write themselves Fellows in print, but they have no such Stile by the Charter of *H. 8.* The four Supervisors in the Old Charter, now write themselves Censors, according to the Charter of *Car. 2.* The Number of Fellows, as they are called in the Charter of *Car. 2.* being limited, they have brought in the Candidates to wait

for Vacancies. They administer Oaths, and daily Instances shew us that they act only upon the New Charter, and are not the Corporation of *H. 8.* who sue us, for that we are our selves, and they have long quitted it. The Charter of *H. 8.* belongs only to us. And there are in Truth two Colleges of Physicians in *London.*

I must here take Notice of what I think has been a Mismanagement of the University Doctors, that we may avoid the same for the future. They have been sued by the Corporation of *H. 8.* Yet when they have submitted, they were not admitted by that Corporation, but by the New College, which is a quite different one: This is inconsistent both in the College, and themselves. The University Doctors ought always to be admitted according to the Old Charter, because that is theirs.

There is another Thing said in this dispute which I think very strange.

Every

Every Body allows that *The Remarks* have given the true meaning of the Charter ; yet some will say, that by the *Nemo*, the Letter is against us. I think, if the Charter is Sense, it is as plain that the Letter is with us. But however, what is Law, or any Act of Parliament, at that rate ? If we know the true meaning of it, and yet it is not to be understood according to its meaning.

Besides, if this *Nemo* could with common Sense refer to *The Faculty*, it would be the most considerable *Nemo* that ever was in any Law ; able to repeal two Acts of Parliament, without taking Notice of them, and yet to stand good against a later one, because it did not take Notice particularly of the *Nemo*.

I must offer one Thing further to the Universities. Some Doctors for their Ease or Conveniency may chuse to submit to the College, and it is not that they should be debarred if they like it.

it. But yet I think it is proper for the Universities to oblige all the Doctors, who commence before this Controversy has had its Supreme Decision, not to be admitted without a Clause to save all Rights belonging to the Universities. This is no Injury to the College; nor hard upon the Doctors, who are bound by their Oaths to maintain all University Privileges, and only prevents the Plea of common Usage, and leaves the Cause to be tryed with a better Grace. And this can't be too much for us to ask of the Universities, who 'tis plain are so far concerned in the Case, that if the Matter stands as at present, the College will be the same for Physick as the Inns of Court are for Common Law; For if they can no more qualify in one Profession than the other, Gentlemen will only run through their general Studies there, and come to the College for their Qualification. And in a short time, upon this Scheme, I dare say, we shall

shall have no Doctors of Physick in the Kingdom, except those who happen to be Fellows of Colleges in the Universities.

And if we should lose our Cause, which I cannot possibly apprehend, I don't think the Universities can fear, but that the Legislature will do them Justice. There is no Nation in the World, where the Professors of its own Universities have not the liberty of exercising their Profession. And we ought not to believe that our own Nation will think our own Universities the least considerable in *Europe*.

(17)
will give no Doctor of Divinity the
honour, except those who happen
to be fellows of colleges in the city.

And if we should lose our Garter,
I cannot possibly apprehend, I
think the Universities can fear
that the Legislature will do them
harm. There is no Nation in the
world, where the Professor of its
Universities have not the liberty
of teaching their Principles. And we
ought not to believe that our own
will strip our own Universities
of their constitution in Europe.

It is true, that the Universities
of Europe are not all the same,
but they are all the same in
this, that they are all the same
in their constitution.

It is true, that the Universities
of Europe are not all the same,
but they are all the same in
this, that they are all the same
in their constitution.

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*Inter Petitiones Parliamenti de
Anno 9. Hen. 5. in Turri
London' remanen'.*

HE Y and most Mighty Prince,
Noble and Worthy Lordes
Spirituele and Temporele, and Wor-
shipfull Comones; for so moche as a
Man hath thre Thynges to govern,
that is to say, Soule, Body, and wordly
Goudes, the which ought and should
ben principally reiveted by three Sci-
ences, that ben Divinitie, Fysyk, and
Law; the Soule by Divinitie, the Body
by Fysyk, wordly Goudes by Law;
and those Conynges sholde be used
and practised principally by the most
Conyng Men in the same Sciences,
and most approved in Cases necessarie
to encrease of Vertu, long Life, and
D Goudes

Goudes of Fortune, to the Worship of God, and comyn Proffit : But worthy Soveraignes as hit is known to Your Hey Discretion, meny unconynge and unapproved in the forsayd Science practiseth, and specially in Fyfyk, so that in this Realme is every Man, be he never so lewed, taking upon him Practise, is suffred to use hit to grete Harm and Slaughtre of many Men ; where, if no Man practised therein, but al onely conynge Men and approved sufficiently, y learned in Art, Filosofie, and Fyfyk, as hit is kept in other Londes and Roialmes, ther shulde, many Man that dyeth for defaute of helpe, lyve, and no Man Perish by unconynge ; Wherefore pleseth to Your Excellents Wysdomes, that ought astur Your Soul have mo entendance to Your Body for the Causes abovesayd to ordeine and make in Statuit perpetually to be straytly y used and kept, that no Man of no manner of Estate, Degre,

Degree, or Condition, practise in Fy-
 syk fro this time forward, but he
 have long time y used the Scholes of
 Fyfyk withynne some Univerfitee, and
 be graduated in the fame, that is to
 fay, but he be Bacheler or Doctour of
 Fyfyk, having Letters Testimoniales
 fufficeant of on of these Degrees of
 the Univerfitee, in the which he
 took his Degree yn, undur Peynel of
 long Emprifonment, and paying xli.
 to the Kyng. And that no Woman
 use the Practife of Fyfyk undre the
 fame Payne; and that the Sherrefs of
 every Shire make Inquifition in thaire
 Tornes, if there be any that forfaiteth
 agens this Statuit under a Payne rea-
 sonable, and thenne that they putte this
 Statuit in Execution without any Fa-
 vour, under the fame Payne: Also left
 that they the which ben able to pra-
 ctife in Fyfyk ben excluded fro Practife
 the which be nought graduated, ple-
 fith to Your Hey Prudence to fend
 Writts to all the Sherreffs of *England*,
 D 2 that

that every Practifour in Fyfyk nought graduated in the fame Science that wayle Practife forth, be wythynne on of the Univerfitees of this Lond by a certain Day, that they ben able mowe aftur trewe and froyte Examination be receyved to theyr Degree, and they that be nought able to cefe fro the Practife, in to the time that they ben able and approved of, or for to never more entermete thereof; And that hereto alfo be y sett a Payne conveyent.

D O R S O.

*Respons' bujus Petitionis patet in Rotulo
bujus Parliamenti, data Secundo
die Maij, Anno Regni Regis
Henrici quinti post Conquestum
nono.*

Rot.

Rot. Parl. 9. Hen. V. p. 1. m. 15.
n^o. 11.

*L'Ordinance encountre les Entremettours de Fi-
sik & de Chirurgie.*

Item, **P** U R ouster Meschie-
ves & Perils que
longement ont continuez dedeinz le
Roialme enter les geints per my ceux
quont usez L'arts & le practik de
Fistik & Chirurgie petendantz soi bien
& Sufficiéanment apris de Mesmes les
Arts en de veritie nont pas estez a
grande Deceite a le Peuple. Si est
ordinez & Asientuz in ceste Parle-
ment que le Seigneurs du Conseil
du Roy pur le tempz esteantz aient
poair per Auctorité de Mesme le Par-
lement de faire & mettre tiele Ordi-
nance & punisement envers ceux Per-
sones que desore enavant vorront en-
termetter & user le practik des ditz
Arts & ne Sont my hables ne appro-
vez.

' vez en ycelles come appent as mes-
 ' mes les Arts cestafavoir ceux de Fi-
 ' fik en les Univerfitees & les Surgeons
 ' entre les Mestres de cell Arte, &
 ' ceo come Semblera au ditz Seigneurs
 ' le pluis Covenable & Neceffarie en le
 ' cas felone lour bon adoïs, & discreti-
 ' ons pur le feurete de le Peuple.

Extrahitur 17 Die No-
vembr' 1701, per Geo.

Holmes Deputat. Willi.

Petyt, Ar' Custodis Re-
cordorum in Turri Lon-
don' remanen'.

Convenit cum Recordo,

W. PETTT.

An

*An ACT for the appointing of
Physitians and Surgeons.*

3. Hen. 8.

TO the King our Sovereign Lord,
and to all the Lords Spiritual
and Temporal, and Commons in this
present Parliament assembled: Foras-
much as the Science and Cunning of
Phylick and Surgery (to the perfect
Knowledge whereof be requisite both
great Learning and ripe Experience)
is daily within this Realm exercised by
a great multitude of ignorant Persons,
of whom the greater part have no
manner of insight in the same, nor in
any other kind of Learning : (2) some
also can no Letters on the Book, so
far forth that common Artificers, as
Smiths, Weavers and Women boldly
and accustomably take upon them great
Cures, and things of great difficulty :
in the which they partly use Sorcery
and Witchcraft, partly apply such Me-
dicines

dicines unto the Disease, as be very noxious, and nothing meet therefore, to the high displeasure of God, great infamy to the Faculty, and the grievous hurt, damage and destruction of many of the Kings liege People; most especially of them that cannot discern the uncunning from the cunning: (3) Be it therefore (to the surety and comfort of all manner people) by the Authority of this present Parliament enacted, That no person within the City of *London*, nor within seven Miles of the same, take upon him to exercise and occupy as a Physician or Surgeon, except he be first examined, approved and admitted by the Bishop of *London*, or by the Dean of *Pauls*, for the time being, calling to him or them four Doctors of Physick, and for Surgery, or other expert Persons in that Faculty, and for the first examination such as they shall think convenient, and afterward alway four of them that have been so approved, (4) upon the pain of forfeiture

forfeiture for every month that they do occupy as Physitians or Surgeons not admitted nor examined after the Tenor of this Act, of v li. to be imployed the one half thereof to the use of our Sovereign Lord the King, and the other half thereof to any Person that will sue for it by Action of Debt, in which no Wager of Law or Protection shall be allowed.

II. And over this, That no Person out of the said City and Precinct of seven miles of the same, except he have been (as is aforesaid) approved in the same, take upon him to exercise and occupy as a Physician or Surgeon, in any Diocess within this Realm, but if he be first examined and approved by the Bishop of the same Diocess, or he being out of the Diocess, by his Vicar-general ; either of them calling to them such expert Persons in the said Faculties , as their discretion shall think convenient, and giving their Letters Testimonials under their Seal

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to

to him that they shall so approve, upon like Pain to them that occupy contrary to this Act (as is abovesaid) to be levied and employed after the form before expressed.

III. Provided alway, That this Act nor any thing therein contain'd, be prejudicial to the Universities of Oxford or Cambridge, or either of them, or to any Privileges granted to them.

(2) *Memorand.* That Surgeons be comprised in this Act of Physicians, for like mischief of ignorant Persons presuming to exercise Surgery, *Rast. pl. fol. 429.*

A P.

A P P E N D I X.

THAT I may fill up a vacant Page, I will make one Remark further upon these Words in the Charter, *Nemo exerceat dictam Facultatem nisi ad hoc Admissus*. This is the only Place in the Charter where any Admission is mentioned. And *The Remarks* have shewn what the Limitation *ad hoc* means, *i. e. ad exercendum Facultatem* only. They can admit to Practise those who are fit, as the Bishop and Dean could, but to nothing else. But the College would have this Admission stand as a general Word, without reference to the rest of the Period ; and so extend it to Admission into the Community, or what they have a mind to ; but this is inconsistent both with Grammar and Sense. And the only Reason of endeavouring to destroy the Limitation *Ad hoc*, is, because otherwise all Admission into the Community is at an End, because Admission is no where else mentioned. And they themselves think it a little odd, for a Doctor of Physick of the Universities to be admitted Practicant in the College, and therefore they would have it extend so far as Admission *in Communitatem*. But that can't be. And if it could, it would go a great deal further. For they likewise pretend, without any Foundation in the Charter, to make
By-

By-Laws *de Admissione*; and therefore if they could make this Word stand general, they might by their By-Laws as well make it extend to Admission to Degrees, as into the Community, and make themselves a compleat University at once, which I think they don't yet take upon them; and I only mention this to shew the Absurdity of taking Admission otherwise than according to the meaning of the Charter, and at the same time to undertake to make By-Laws about it, without any Foundation in the Charter. I won't pretend to prescribe Forms to the College, but if they will call it Admission for us, it must be only to this Purpose. *We, The Community, &c. recognise N. B. Doctor of Physick of the University of — to be one of The Faculty, Community, or College of Physicians in London, &c.* This is all they can do by this Charter, let it be called Admission, or what they please.

F I N I S.